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Nos. 84-237, 84-238 and 84-239

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1984

YOLANDA AGUILAR, *et al.*, *Appellants*,

v.

BETTY-LOUISE FELTON, *et al.*, *Appellees*.

SECRETARY, UNITED STATES DEPARTMENT OF EDUCATION, *Appellant*,

v.

BETTY-LOUISE FELTON, *et al.*, *Appellees*.

CHANCELLOR OF THE BOARD OF EDUCATION OF THE CITY OF NEW YORK, *Appellant*,

v.

BETTY-LOUISE FELTON, *et al.*, *Appellees*.

**On Appeal From The United States Court Of Appeals For The Second Circuit**

## SUPPLEMENTAL BRIEF OF APPELLEES

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## SUPPLEMENTAL BRIEF OF APPELLEES

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Appellees submit this supplemental brief on the merits under Rule 35 of the Rules of this Court to bring before the Court the decision and judgment of the United States District Court for the Western District of Missouri in *Wamble* v. *Bell*, No. 77-0254-CV-W-8, slip op. (W.D. Mo. Nov. 28, 1984). The decision in the cited case was filed on November 28, 1984, after Appellees were required to file, and had filed, their main brief

on the merits. A copy of the full decision in the cited case is annexed to this Supplemental Brief as an Appendix.

The *Wamble* case is pertinent because at issue was the Title I "by-pass" program instituted and operated in Missouri by the Secretary of the Department of Education under Title I after the Missouri Supreme Court had held that it violated the State Constitution to extend Title I services to "nonpublic" schools. The Missouri Title I "by-pass" program is essentially the same in all respects as the New York City Title I program in question in the appeals before this Court.

In *Wamble*, which was decided after 23 days of trial, the District Judge, Joseph E. Stevens, Jr., held that the Missouri Title I "by-pass" program violated the Establishment Clause of the First Amendment, and permanently enjoined the program, but stayed his injunction pending this Court's determination of the three appeals in the instant case.

Respectfully submitted,

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Dated: December, 1984